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Settlements in joint tortfeasor cases: A guide to the good faith standard

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Imagine that a worker is subjected to unlawful discrimination in the workplace. It turns out that worker isn't on the company's payroll; he's actually employed by a staffing agency that placed him with the company. He brings an action against both the company and the staffing agency, naming them as joint tortfeasors. What happens if the staffing agency wants to negotiate a settlement with the worker, but the company does not? Can the staffing agency get out of the case and prevent the company from later attempting to seek a contribution from it?

Joint defendants often have different ideas about how their case should be resolved. One may want to settle the case quickly; others may want to be vindicated at trial and ultimately pay nothing. Co-defendants and co-obligors often have different budgets, different risk tolerances, and different perspectives on the merits of their collective case. And they may bear significantly different levels of liability for the plaintiff's claim.

During mediations, it is not uncommon for one defendant to pursue settlement, while a co-defendant does not. In such a case, a "good faith" settlement may be an option for the defendant that wants to settle.

Good faith law

California law recognizes that joint tortfeasors don't always see eye-to-eye. A defendant who chooses to settle a case may be able to go their separate way without further financial exposure if the settlement was entered into in "good faith." The good faith doctrine is part of the "Contribution Statutes," originally enacted in 1957, that were designed to distribute more equitably the responsibility for a plaintiff's losses by ensuring that a single defendant would not be saddled with the entire judgment when others were also at fault. The laws were later updated to tie parties' liability to their respective fault. *In American Motorcycle Association v. Superior Court* (20 Cal. 3d 578, 578 P.2d 899, 146 Cal. Rptr. 182 (1978)), the California Supreme Court held that liability for a plaintiff's losses should be apportioned on the basis of comparative fault. A tortfeasor who had paid more than his share should be able to recover the excess from joint tortfeasors.

An exception was made to the comparative fault rule, however. A tortfeasor who had previously entered into a "good faith" settlement with the plaintiff would be released from claims for partial indemnity by other tortfeasors. This carve-out recognized that defendants would have little motivation to settle claims if they remained subject to paying some future contribution to co-defendants who did not settle. Under CCP Section 877.6, a defendant who made a good faith settlement would therefore be shielded from claims for contribution by co-defendants.

The good faith process

When they want to be shielded from further liability, settling parties will file a motion with the court for a determination of good faith and will request dismissal of the pleading against them. Pursuant to California Rules of Court Rule 3.1382, the notice or application must list each party and pleading affected by the settlement. If a court determines that the settlement was made in good faith, this will "bar any other joint tortfeasor or co-obligor from any further claims against the settling tortfeasor or co-obligor for equitable comparative contribution, or partial or comparative indemnity, based on comparative negligence or comparative fault."

A good faith determination could therefore leave the remaining defendants holding the bag if the settling party ends up paying less than their proportionate share of the plaintiff's ultimate recovery. Even though the amount of the settlement is deducted from what the plaintiff might recover against the non-settling defendant - ensuring that the plaintiff does not receive a windfall - the non-settling defendant must still pay the entire balance of the judgment without any contribution from the settling tortfeasor.

Good faith considerations

The good faith requirement was intended to limit the opportunity for an unscrupulous plaintiff to handpick the best defendant against whom to proceed in court. By settling with other defendants prior to trial, such a plaintiff could stack the deck so that only the defendant with deep pockets or the one with whom jurors would be least sympathetic was left to satisfy the judgment.

A plaintiff can still choose among joint tortfeasors, deciding who should be entitled to the benefit of a good faith settlement, but that is now just the first step. The settling defendant must still seek the court's determination that the settlement was entered into in good faith. In making such a determination, courts may ask the following:

- whether the settlement amount is reasonable and fair in light of the parties' respective liability;
- if there is a personal relationship or evidence of collusion between the settling party and the plaintiff;
- whether co-defendants were kept in the dark about the settlement; and
- if there are any other reasons to believe the settlement would not advance justice.

Based on the answers to these questions, the court will then make a determination whether the settlement is indeed entered into in good faith. If it is, the court will approve that settlement.

Separate contracts

A cautionary note to settling defendants seeking to take advantage of good faith settlements: If the co-defendants have a contractual agreement to indemnity, the good faith doctrine may not shield the settling party. For example, in *Interstate Fire and Casualty Insurance Company v. Cleveland Wrecking Company*, (182 Cal. App. 4th 23 (2010)), the court reversed the trial court's finding that Cleveland's good faith settlement cut off defendant Webcor's ability to sue it for contractual indemnity or contribution. The court held that the non-settling defendant could still pursue a cause of action against the settling tortfeasor for breach of an express contractual indemnification clause, and that the indeclaim was not barred by the good faith settlement determination.

This means that in the event of a contractualjoint-and-several-liability relationship - such as a contract between a staffing agency and the hiring company - before a defendant considers entering into a good faith settlement, it should review the contract to determine if there may be a separate contractual indemnity obligation that would not be shielded by the good faith settlement.

Conclusion

It is often the case that in a mediation involving joint and several liability against co-defendants, one defendant will wish to settle and the other will not. When this occurs, the possibility that the non-settling defendant may be left holding the bag might ultimately incentivize them to join in on the settlement. Even when this does not happen, there may still be an opportunity to resolve some of the claims and settle with one of the defendants. Such a settlement could greatly simplify the case and benefit both the settling defendant and the plaintiff.

In such cases, defendants should be prepared, before the mediation, to address whether they would consider a good faith settlement. During the mediation, if one defendant decides to enter into a good faith settlement, it should look at the factors courts consider when determining good faith and should be guided by these factors. Only then can it ensure that its settlement is made in good faith and will be approved by the court.

When thoughtfully pursued, a good faith settlement can make the difference between no resolution, some resolution, or even the complete resolution of claims with all defendants.

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